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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

NO. 641

REYES ARIAS OROZCO,
Petitioner

v.

THE STATE OF TEXAS,
Respondent

On Petition for Writ of Certiorari to
The Court of Criminal Appeals of Texas

BRIEF FOR RESPONDENT

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OPINION BELOW

The opinion of the Texas Court of Criminal Appeals, which is sought to be reviewed by Petitioner, is not yet reported. The opinion was delivered on December 6, 1967, Opinion No. 40,706, and is reproduced in the Appendix.

JURISDICTION

Respondent does not question the jurisdictional allegations as set forth in the Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent constitutional provisions are set forth in the Petition.

QUESTIONS PRESENTED

Respondent has no particular quarrel with the statement of "Question Presented" by Petitioner except the question of the legality of the arrest, the interrogation, the search, and the admission into evidence of physical objects seized must be considered in the light of Petitioner's failure to object specifically to the tender into evidence of the results of the arrest, questioning and search.

The central question posed by this certiorari proceeding is the application of *Miranda v. Arizona,* 384 U.S. 436 (1966), to the facts and circumstances of this case.

STATEMENT OF THE CASE

Petitioner's Statement of the Case is substantially correct although apparently Petitioner was not "awakened by the detectives," but was already awake when the officers entered his room. (Appendix 14.)

ARGUMENT

Miranda v. Arizona, Supra, Does Not Apply To The Facts Of This Case And The Questioning Of Petitioner By The Police At The Time Of His Arrest Was Constitutionally Permissable.

The facts show that the Petitioner shot and killed one John Hugh Elliott outside the El Farleto Cafe in Dallas, Texas, shortly after midnight on January 5, 1966. Police investigation during the early morning hours of January 5 located Petitioner's companion at the time of the shooting, who in turn revealed to the officers where Petitioner lived. (See pages 48-51 of the Statement of Facts of the testimony at the state trial

which forms a part of the Record before this Court; the Statement of Facts is hereinafter referred to as S/F —,). The officers after delivering the witness to the police station, returned to the house where Petitioner resided and were admitted with the consent of an unidentified woman at the house. (Appendix 13; S/F 54, 55.) This woman also indicated the room where Petitioner could be found. (Appendix 14; S/F-55, 56.)

The officers then proceeded to interview Petitioner, the pertinent parts of the interview being reproduced at pages 15 through 17 of the Appendix. (See also S/F 57, 58.) It should be noted that after the Petitioner had given his name he was placed under arrest and the ensuing questions were directed to him after he was in custody. (Appendix 17; S/F 60.)

While Petitioner questions the validity of the arrest itself in Footnote 2, Page 6 of Brief of Petitioner, Respondent says that the arrest was unquestionably proper in the Constitutional sense. Observation is made that the Texas requirement that an arrest without a warrant is legal, only when Petitioner is about to escape, is not of constitutional dimension, as most jurisdictions permit an arrest without a warrant, upon a showing of probable cause, without reference to the possibility of escape. See Section 6, subsection b (2) of the Article on Arrest in Corpus Juris. Secundum, 6 C.J.S., 586-588, which discuss the general rule and the Texas exception. Any definition of the "impending escape" requirement of the Texas law should be left for the Texas courts to determine.

Respondent, therefore, reasserts that the only pertinent question for review is the applicability of *Mi-*

randa v. Arizona, supra, to the interrogation of the Petitioner after his arrest.

It should first be noted that the interrogation did not take place at the police station but in surroundings familiar to the Petitioner. In this, the present situation is distinguishable from *Miranda.*

Second, and more important, there was no specific objection made by Petitioner to the testimony of the arresting officer concerning the questions put to the Petitioner and the responses made thereto. See the testimony as set out at pages 15 through 17 of the Appendix. Only a general objection was imposed, and the court's attention was not specifically directed to the case of *Miranda v. Arizona,* supra, and to the fact that the in custody interrogation was conducted in the absence of the warning made mandatory by *Miranda.* (Appendix 17.)

Article 40.09 (6) (c) of the Code of Criminal Procedure of Texas requires that an objection made to any action of the court should specify the "grounds therefor." The necessity of a specific objection as opposed to a general objection is discussed in Sections 24, 25 and 26 of *Texas Law of Evidence* by McCormick and Ray.

A specific objection permits the judge to understand the precise question concerning the evidence objected to, and thereby make an intelligent ruling concerning the objection. This requirement promotes orderly state trials and presents an adequate state ground for denial of relief in this case. *Henry v. Mississippi,* 379 U.S. 443 (1965). The specific objection rule of evidence comes within the philosophy expressed in *Spencer v.*

Texas, 385 U.S. 554 (1966), when this Court refused to impose its own evidentiary standards upon the state courts, stating at pages 568 and 569 of the opinion, that this

> ". . . would be wholly unjustifiable encroachment by this Court upon the constitutional power of States to promulgate their own rules of evidence to try their own state-created crimes in their own state courts, so long as their rules are not prohibited by any provision of the United States Constitution. . . ."

CONCLUSION

For the reasons stated above, Respondent says that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lonny F. Zwiener, Assistant Attorney General of Texas, certify that a copy of the foregoing Respondent's Brief was served on the Attorney for Petitioner, by depositing same in the United States Mail, postage prepaid, certified mail, addressed to Mr. Charles M. Tessmer, Lawyer's Building, 706 Main Street, Suite 400, Dallas, Texas 75202, on this the ____ day of January, 1969.

LONNY F. ZWIENER
Assistant Attorney General